

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5378 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 No

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GULAB @ GULABBEN, W/O VINODBHAI BHIKHABHAI CHUNARA

Versus

STATE OF GUJARAT

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Appearance:

MR HR PRAJAPATI for Petitioner  
MR.C.C.BHALJA, ASSISTANT GOVERNMENT PLEADER  
for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 03/02/99

ORAL JUDGEMENT

The prayer in this writ petition under Article 226 of the Constitution of India is to quash the detention order, Annexure "A" dated 23.6.1998 with further prayer to release the petitioner from illegal detention.

The grounds of detention reveal that six cases under Bombay Prohibition Act were registered against the petitioner. In addition to this, two witnesses gave confidential statements which were considered by the Detaining Authority. Upon considering those materials the Detaining Authority came to subjective satisfaction that the petitioner is bootlegger and his activities were prejudicial for maintenance of public order. Accordingly, the impugned order of detention was passed which is under challenge in this writ petition on the sole ground that the activities of the petitioner cannot be said to be prejudicial for maintenance of public order.

The learned Assistant Government Pleader at the time of hearing raised preliminary objection that the writ petition is incorrectly drafted. He pointed out various averments in the writ petition showing that the petitioner is said to have been declared dangerous person whereas the Detaining Authority did not allege that the petitioner is dangerous person. The learned Counsel for the petitioner stated that the writ petition was mistakenly drafted and he is not pressing that the Detaining Authority has declared the petitioner to be dangerous person. He confined his argument to the activities of the petitioner not being prejudicial for maintenance of public order.

Further objection was raised by the learned Assistant Government Pleader that in the prayer clause of writ petition also the relief is not on the basis of the activities of the petitioner as bootlegger. However, this objection cannot be sustained because in relief clause (A), the prayer is for quashing Annexure "A" dated 23.6.1998 and in Annexure "A" there is no allegation that the petitioner was considered to be dangerous person. Since, no dispute was raised by the learned Counsel for the petitioner whether the petitioner is or is not dangerous person and he proceeded to argue on the assumption that the activities of the petitioner were considered by the Detaining Authority in the nature of the bootlegging activities, the petition cannot be dismissed on this technical ground.

The only ground pressed in this writ petition is that the activities of the petitioner were not prejudicial for maintenance of public order. In view of this stand of the learned Counsel for the petitioner, the subjective satisfaction of the Detaining Authority that the petitioner is a bootlegger requires no interference.

However, a bootlegger cannot be preventively detained unless his activities are found to be prejudicial for maintenance of public order. For this, material on record has to be examined.

The petitioner time and again committed violation of the provisions of the Bombay Prohibition Act and he was booked on six occasions under the aforesaid Act. If he committed violation of the provisions of the Bombay Prohibition Act and appropriate cases were registered against him, it was only law and order situation which was created by the petitioner which was properly tackled by the authorities concerned. In the absence of allegation that in these six cases the petitioner acted in such a manner which created situation prejudicial for maintenance of public order, these activities could not be pressed in service for arriving at the subjective satisfaction that these activities of the petitioner were prejudicial for maintenance of public order.

The next material is statements of two confidential witnesses. On the face value of the statements of two witnesses, it can be said that because of these two incidents even tempo of the life of the locality or public in the locality was not disturbed. On one occasion the petitioner asked the witness to store the stock of liquor at his business place. The witness refused to oblige the petitioner, whereupon the petitioner dragged him on the road and beat him. People collected there. The petitioner became excited. He rushed towards those people with open knife, on account of which atmosphere of fear was created. It cannot be said by any stretch of imagination that such activities disturbed public tranquillity and peace in the locality nor it can be said that by such incident even tempo of the life of the locality or community was disturbed.

Similar is the second incident dated 16.6.1998, when the petitioner had beaten the witness on suspicion that the witness was police informer. Usual story proceeded, that people collected and the petitioner rushed towards them with weapon. Atmosphere of fear was created and daily routine of the people was disturbed. This incident also does not travel beyond the sphere of law and order situation. Consequently, there was no material what to say of sufficient material before the Detaining Authority for reaching subjective satisfaction that the activities of the petitioner were prejudicial for maintenance of public order. The preventive detention of the petitioner on these facts cannot be sustained. The writ petition therefore succeeds and is

hereby allowed. The impugned order of detention dated 23.6.1998 is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt